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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/625,146

07/23/2003

John R. Sloop

141901-1010

8269

24504

7590

10/31/2008

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

10/31/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/625,146	<b>Applicant(s)</b> SLOOP, JOHN R.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 22-28 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-8 and 22-28 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### DETAILED ACTION

Claim 2-8, 22-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/30/06.

Claims 1, 27, 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner fails to find "adapted" in the specification. Applicant seems to have replaced "configured" with adapted, but there is still no explanation of how any attractant is adapted (modified, altered, arranged ?) . There is no physical, chemical or any other modification of any attractant, as applicant states is seen at Fig. 4.

Claim 1, 27, 28 STAND rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is unclear how the (1) attractant is "configured", and how different figures would entice different animals. It is unclear how the (2) trigger is "configured", and how different figures would entice different animals. (3) it is unclear how the attractant is configured to dissolve, and how a pH is predetermined. (4), it is unclear how the

subduing agent is coupled to trigger:, it is unclear how to subdue them. This is indefinite and does not specifically claim and define the invention, as claim 1 is open to ambiguity and multiple interpretations.

Claims 1,27,28 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification identifies "limited" subduing agents; metal or percussion or chemical reactants, not further defined or identified, or sponges, stated to result in energy release, but not explained as to how this leads to death. The protective materials are undefined or exemplified, except as mineral oil. However, mineral oil is not supported as a protective component of the claim 1 apparatus as shown as #108. The specification identifies a desire for species-specific control, by adjusting dose and size of apparatus components, and attractants; but only sugar and meat are mentioned, and it is left to the artisan to determine how much of what components are to be used to subdue a desired species. The specification does not present exemplification of effectiveness to subdue one species, but not harm another.

There is no description of specific elements of an apparatus with any form or amount of attractant, elected as meat, in or on an apparatus with any specific form or material in any particular amount that would dissolve in the elected pH with any specific subduing agent and amount thereof, except for the non-elected exploding components. The metal subduing agents were not presented in any shape, form, or amount, in connection with any specific trigger material and meat or other attractant material, to enable one of ordinary skill to practice the claimed invention.

Claims 27 & 28, new, suffer from the same defect. There is no specific trigger or energy device claimed, or supported- applicant argues for the non-elected blasting device as an example.

It is unclear how a poison can be excluded as the elected species- a material such as Li, K or Na would serve to meet this requirement.

Claim 1 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the" alternative, under 35 U.S.C. 103(a) as obvious over FAJT 5674518. The rejection of record is in essence maintained; metal hydroxides - KOH- are used, coated with mineral oil, (col. 3, last paragraph) and adjust acid Ph (col. L4, top), Permitting Rotenone to dissolve & enter the body, & eventually subdue the fish. Claims 27,28 are met as the KOH can be considered to not be a poison, but it acts in accord with the instant claim to indirectly subdue the fish. Claim 27 meat is evident at col. 6, lines 37-beef byproducts or fish meal. Although not stated as 0.5-2.5, the Ph of the stomach would be at that level- it is stated to be acidic(col. 4, line 20).

Claim1 stands rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shulyer-2957804 Wild animals (column 2, lines 40-46) can be killed with bait, attractant (column 5, lines 21-26) coated over a pH-sensitive trigger (column 4, lines 67-73) so the animal ingests the attractant bait but it is effective to release (Table A) subduing agent only in a high pH, intestinal, environment. Meat odors are attractant (column 12, line 35).

Applicant's arguments filed 7/9/08 have been fully considered but they are not persuasive. Applicant in essence argues that baits are adapted as claimed, & the prior art cited does not have the various attractants, adaptations, triggers claimed. However, a composition is claimed, & the components are seen at the cited references, except for Shulyer for the new claims 27,28, . However, it is not clear if 27,28 are supported as of the elected invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

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